

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

JOHN MAGUIRE, :  
 :  
Plaintiff, : Case No. 3:07cv178  
 :  
vs. : JUDGE WALTER HERBERT RICE  
 :  
COMMISSIONER OF SOCIAL SECURITY, :  
 :  
Defendant. :

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DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS  
OF UNITED STATES MAGISTRATE JUDGE (DOC. #24) IN THEIR  
ENTIRETY; PLAINTIFF'S OBJECTIONS TO SAID JUDICIAL FILING  
(DOC. #25) SUSTAINED; PLAINTIFF'S COMPLAINT DISMISSED,  
WITHOUT PREJUDICE; OBSERVATION BY THE COURT; JUDGMENT TO  
ENTER ACCORDINGLY; TERMINATION ENTRY

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Pursuant to the reasoning and citations of authority set forth in the Report and Recommendations filed by the United States Magistrate Judge, on September 26, 2008 (Doc. #24), as well as upon a thorough review of this Court's file and the applicable law, said Report and Recommendations are adopted in their entirety. While perhaps sounding contradictory, Plaintiff's Objections to said judicial filing (Doc. #25) are sustained.

Defendant's Motion to Dismiss (Doc. #14) is sustained, and the captioned cause is ordered dismissed, for lack of this Court's subject matter jurisdiction,

without prejudice to refiling, once Plaintiff has exhausted his administrative remedies.

The fact that this Court has dismissed Plaintiff's Complaint, without prejudice to a refiling in this Court, once he has exhausted his administrative remedies, is without prejudice to the Defendant claiming, should such a refiling be made, that Plaintiff's refiled Complaint should be dismissed, due to the untimely attempt to exhaust his administrative remedies and/or his untimely filing of his refiled Complaint.

Should the Plaintiff attempt to refile this Complaint, said refiling is to be had on *in forma pauperis* status, without Plaintiff having to pay a filing fee.

Judgment is to enter in favor of Defendant and against Plaintiff, dismissing the Plaintiff's Complaint, without prejudice to refiling, once he has exhausted his administrative remedies.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

March 30, 2009

/s/ Walter Herbert Rice  
WALTER HERBERT RICE, JUDGE  
UNITED STATES DISTRICT COURT

Copies to:

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